

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE:B-213314**DATE:** February 7, 1984**MATTER OF:** Darwin Construction Company, Inc.**DIGEST:**

1. GAO will consider protest against bid correction where competing bidder points out substantial magnitude of correction and requests GAO review without more specific allegation of impropriety.
2. GAO will not disturb administrative determination to permit correction of mistake alleged after bid opening but before award unless the determination has no reasonable basis.
3. Agency determination to permit correction in bid was proper where agency reasonably determined that bidder presented clear and convincing evidence of the mistake and the intended bid and worksheets evidence that the mistake was the result of an obvious extension error.

Darwin Construction Company, Inc. (Darwin), protests the decision by the Naval Facilities Engineering Command (Navy) to permit M.B.E., Inc. (MBE), to correct a mistake in bid which was claimed after bid opening and the subsequent award of a contract to MBE. Darwin asserts that there may not have been an adequate basis for correction and requests that we review the agency determination.

We find the protest without merit.

At bid opening on August 24, 1983, MBE's bid of \$505,400 was low and Darwin's bid of \$724,174 was next low. Darwin protested to the Navy alleging that MBE should be found nonresponsive because it had submitted a below-cost bid. MBE then claimed that its bid contained a mistake and, on September 7, 1983, MBE submitted its worksheets and an explanation that its intended bid was \$678,200. Based on its review of MBE's claim and its worksheets, the Navy determined that MBE had clearly established the existence of the mistake and the actually intended bid. Accordingly, the Navy permitted correction and awarded the contract to MBE for \$678,200.

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Darwin was advised of the award on September 23 and timely filed its protest in our Office on October 6. In this protest, Darwin referred to the above sequence of events and stated that it had not been informed of the claim of mistake, the basis for the claim, or the substantiating documentation evidencing MBE's intended bid. Darwin requested that our Office review the mistake claim and the Navy's determination to permit correction and also asked to be provided with a copy of MBE's mistake claim in order to be able to comment on the propriety of the Navy's action.

The Navy has provided our Office the worksheets evidencing the mistake and the intended bid, but has declined to provide this material to Darwin. In addition, the Navy contends that Darwin's protest was untimely filed because Darwin's initial submission did not allege any specific grounds or deficiency. We disagree with the Navy in this respect.

From a practical standpoint, a protester who questions the propriety of an agency determination to permit a competitor to correct its bid is often faced with very limited information. Here, as is frequently the case, the Navy declined to make MBE's worksheets available to Darwin on the grounds that they are protectable under 5 U.S.C. § 552 (1982) and 18 U.S.C. § 1905 (1982). Our Office has consistently held that the decision of whether to release such documents to the protester is a matter for the agency, not GAO, to make, but that where such material is not provided to the protester, we will review the worksheets to determine the propriety of the agency decision to permit correction. Truland Corporation, B-193152, April 11, 1979, 79-1 CPD 254.

Here, Darwin's initial submission to our Office did point out the substantial magnitude of the correction and recounted its earlier protest to the Navy, as well as to ask for the supporting underlying material in order to be able to comment on the propriety of the correction which was permitted by the Navy. We have considered a protest against correction where the protester has stated that without access to worksheets, it could not independently determine the correctness of the agency's determination and simply asked GAO to review the propriety of the correction. Truland, supra. We have also considered a protest against correction where the protester simply objected that the amount by which the awardee was permitted to correct

its bid was excessive. Brendle Sprinkler Company, Inc., B-202971, July 15, 1981, 81-2 CPD 39. See also Allied Technology, Inc., B-185866, July 12, 1976, 76-2 CPD 34. In our opinion, Darwin's initial submission reasonably may be construed as raising a similar question with respect to the propriety of the bid correction in view of its magnitude and, therefore, the initial submission was sufficient to warrant consideration of the protest by our Office. In this regard, we also note that when our Office delegated authority to the procuring agencies to handle mistake in bid cases, we reserved the general right to question the correctness of such determinations. B-101323, March 21, 1951; B-120281, June 29, 1954; 38 Comp. Gen. 177 (1958).

However, our scope of review in these cases is narrow. Since the authority to correct mistakes in bids alleged after opening but before award now rests with the procuring agency, we will not disturb an agency determination concerning correction unless there is no reasonable evidentiary basis therefor. Kings Point Manufacturing Co., Inc., B-193952, September 14, 1979, 79-2 CPD 196. Generally, the correction of a mistake alleged prior to award will be permitted only where the low bidder has submitted clear and convincing evidence showing that a mistake has been made, the manner in which the mistake occurred, and the intended bid price. See Defense Acquisition Regulation § 2-406.3(a)(2) (1976 ed.); Southern Plate Glass Co., B-188872, August 22, 1977, 77-2 CPD 135. Thus, the pertinent inquiry for the Navy was whether the worksheets clearly established that MBE actually intended to bid an additional \$172,800, for a correct total bid of \$678,200.

We believe that the Navy reasonably concluded that MBE's evidence was clear and convincing as to the mistake and the intended bid. MBE states, and the worksheets confirm, that the bid was intended to be calculated on the basis of the performance of 24,000 yards of grading work which MBE intended to bid at a rate of \$8 per yard. However, as is evident from the worksheets, the \$505,400 bid calculations include grading work of \$19,000, reflecting an extension error resulting from mistaken multiplication of the \$8 per yard rate by 2,400 yards rather than by the indicated and intended 24,000 yards. The Navy indicates that 24,000 yards is the actual area required to be graded under the specifications. Correction

of this error results in an addition to MBE's bid of \$172,800, which results in a bid of \$678,200, the bid amount claimed by MBE and permitted by the Navy. Thus, we find no basis for questioning the Navy's decision to permit MBE to correct its bid.

We deny the protest.

for *Milton J. Fowler*
Comptroller General
of the United States